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Alan M. Gordon  
Patent Law Department 2B  
American Home Products Corporation  
One Campus Drive  
Parsippany, NJ 07054

In re Application of METCALF et al  
U.S. Application No.: 09/674,368  
Int. Application No.: PCT/US99/09486  
Int. Filing Date: 29 April 1999  
Priority Date: 29 April 1998  
Attorney Docket No.: 33377-00  
For: VACCINES CONTAINING RECOMBINANT  
PILIN AGAINST NEISSERIA  
GONORRHOEAE OR NEISSERIA  
MENINGITIDIS

DECISION

This is in response to applicant's "Statement of Material Facts and Reasons for Granting Relief" filed 13 May 2002, which is being treated as a petition under 37 CFR 1.181 to withdraw a holding of abandonment. No petition fee is due.

### **BACKGROUND**

On 29 April 1999, applicant filed international application PCT/US99/09486, which claimed priority of an earlier United States application filed 29 April 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 12 November 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 29 October 2000.

On 28 October 2000, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and a sequence listing in computer readable form (CRF).

On 11 June 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) along with a Notification to Comply with Requirements

for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/920) and a Raw Sequence Listing Error Report, which indicated that a substitute CRF must be filed.

On 11 December 2001, applicant filed a response to the Notification of Missing Requirements including a substitute CRF.

On 18 March 2002, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916) along with a Raw Sequence Listing Error Report, which indicated that the substitute CRF filed 11 December 2001 was defective and that a substitute CRF must be filed. The Notification of Defective Response set a one month, non-extendable time limit for response.

The present national stage application became abandoned at midnight on 18 April 2002 for failure to timely respond to the Notification of Defective Response.

On 13 May 2002, applicant filed the present petition to withdraw the holding of abandonment.

### **DISCUSSION**

The petition states that applicant was not aware that certain mandatory sequence listing sections needed to be corrected in response to the Notification of Defective Response mailed 18 March 2002. However, the Raw Sequence Listing Error Report mailed 18 March 2002 specifically pointed out the errors to be corrected and bears the indication "Does Not Comply, Corrected Diskette Needed". Moreover, the Notification of Defective Response mailed 18 March 2002 sets forth that applicant must provide a substitute CRF. Therefore, applicant was made aware that the CRF filed 11 December 2001 needed corrections. Applicant has not made an adequate showing as to why no timely reply to the Notification of Defective Response was ever submitted.

### **CONCLUSION**

For the reasons above, the petition is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181". No petition fee is required.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Bryan Tung  
PCT Legal Examiner  
PCT Legal Office

Telephone: 703-308-6614  
Facsimile: 703-308-6459